IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 08.11.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.10360 of 2004

Carborandum Universal Ltd.,
TIAM House,
72, Rajaji Salai,
Chennai-600 001. .. Petitioner

Vs.

1.State of Tamil Nadu,
rep. by its Secretary,
Housing and Urban Development
Department, Fort St. George,
Chennai-600 009.

2.Chennai Metropolitan Development
Authority, rep. by its Member-Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari to call for the record relating to the notice No.ES3/4794/2004 dated 23.03.2004 issued by the second respondent and quash the same.

For Petitioner : Mr.P.R.Raman

For 1st Respondent : Mr.P.Subramanian
Government Advocate

For 2nd respondent : Mr.J.Ravindran, CMDA

ORDER

(Order of the Court was delivered by P.SATHASIVAM, J.)

The petitioner viz.,Carborandum Universal Limited, challenges the demolition notice dated 23.03.2004 issued by the second respondent in this writ petition.

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2. According to the petitioner, their factory at Pallikaranai i located at Tambaram-Velachery Road in T.S.Nos.542, 546, 560 to 563 566 to 568 and 571 in an extent of around 5 acres, pursuant to the orders of Company Court in C.P.Nos.99 of 1998 and 103 of 1998 date 17.07.1998. According to the petitioner, consequent to th amalgamation, they took over the title and ownership and all th assets and liabilities of the Cutfast Abrasive Tools Ltd., includin the lands and industrial building at Pallikaranai Village. The firs respondent brought forth a scheme for regularisation of unauthorise constructions and framed the Application, Assessment and Collection o Regularisation fee (CMA) Rules, 1999. The petitioner applied fo regularisation of the factory premises at Pallikkaranai village unde the said scheme. The petitioner also made an application to th second respondent on 31.10.2000 and remitted an amount of Rs.15,000/ as regularisation fee advance and Rs.7,000/- towards scrutiny fees By an order dated 31.10.2001, the second respondent determined th balance regularisation fee payable by the petitioner as Rs.6,75,549/- The second respondent also specified that any person aggrieved by th order may prefer an appeal to the Government under Section 113-A(6 of the Town and Country Planning Act, 1971. Pursuant to the same, th petitioner preferred an appeal dated 20.12.2001 to the firs respondent, giving various grounds to reduce the regularisation fe down to Rs.1,45,244/-. Pending appeal, the first respondent cam forward with a revised structure in terms of G.O.Ms.No.121 Housin and Urban Development Department, dated 24.04.2002. In the light o the fresh G.O., reducing the rates, the first respondent by it proceedings dated 03.05.2002 informed the petitioner that th petitioner would be eligible to reapply on or before 30.06.2002 On payment of revised fees as directed, the petitioner made a fres application dated 30.06.2002 with all annexures to the secon respondent. A further sum of Rs.50,000/- as advance regularisatio and scrutiny fee of Rs.10,500/- was remitted by the petitioner According to the petitioner, they are yet to receive any order fro the second respondent. The petitioner also clarified to the secon respondent stating that it had resubmitted for regularisation wit further payment of fees under the revised scheme. Whileso th petitioner received the impugned notice dated 23.03.2004 issued b the second respondent, by he was threatened with demolition actio under the Town and Country Planning Act, 1971 since the petitioner' regularisation application has been returned, unapproved in lette dated 29.09.2003. Aggrieved by the same, the petitioner has filed th present writ petition.

3. None of the respondents has filed counter affidavit.

4. Heard the learned counsel appearing for the petitioner as wel as the respondents.

5. The particulars furnished in the affidavit show that th building/buildings in question are constructed prior to 1999. It i

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also brought to our notice a Division Bench decision of this Court reported in 2006 (4) CTC 483 (CONSUMER ACTION GROUP VS. THE STATE OF TAMIL NADU), wherein it has approved all action taken prior to 22.02.1999 vide para 32(i). It is clear that the Division Bench has not approved the subsequent regularisation scheme and various orders passed thereafter. In such circumstances, we have to see whether the petitioner is entitled to any relief.

6. Mr.P.R.Raman, learned counsel appearing for the petitioner submitted that in view of the orders of the Division Bench referred to above and of the fact that the building/buildings came into existence well prior to 1999, a direction may be issued to the Government for disposal of the petitioner's appeal dated 20.12.2001 on merits. It is not in dispute that after framing of the second scheme, the said appeal was disposed of by the first respondent with a request to the petitioner to apply afresh based on the second scheme. The said order dated 03.05.2002 of the Government is available at page 27 of the typed set of papers. A perusal of the said order shows that the Government had not gone into the claim of the petitioner-appellant in that appeal on merits and the appeal was disposed of only on the basis of the revised scheme. In such circumstances, the learned counsel for the petitioner submitted that direction may be issued to the Government for restoration of the appeal dated 20.12.2001 and disposal of the same on merits.

7. We have verified the ultimate conclusion and the directions issued by the Division Bench in the above referred decision. We have also verified the appeal of the petitioner dated 20.12.2001 and the order of the Government dated 03.05.2002. As rightly pointed out and in view of the fact that the first respondent had not applied their mind and verified the facts and figures with reference to the amount payable by the petitioner, we are of the view that ends of justice would be met by issuing appropriate direction.

8. In the light of what is stated above, while quashing the impugned notice, we direct the first respondent-Secretary, Housing and Urban Development Department, Chennai-9, to restore the appeal of the petitioner dated 20.12.2001 and dispose of the same afresh in accordance with law after affording an opportunity to the petitioner within a period of 12 weeks from the date of receipt of a copy of this order.

9. The writ petition is allowed on the above terms. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Secretary,
State of Tamil Nadu,
Housing and Urban Development
Department, Fort St. George,
Chennai-600 009.

2.The Member-Secretary,
Chennai Metropolitan Development
Authority, No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.

ONE CC TO M/S P.R. RAMAN, ADVOCATE SR NO 53364

ONE CC TO MR J. RAVINDRAN, ADVOCATE SR NO 54105

ONE CC TO G.P., SR NO 53495

W.P.No.10360 of 2004

08.11.2006

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